

BEFORE THE IOWA
ETHICS AND CAMPAIGN DISCLOSURE BOARD
Pursuant to Chapter 17A and Chapter 68B

IN THE MATTER OF:)	Case No. <u>2007-IECDB 06</u>
)	
ROBERT MARQUSEE,)	
In His Capacity as the Candidate for)	MOTION TO SET ASIDE
the Marqusee for Supervisor,)	DEFAULT JUDGMENT
RESPONDENT.)	

COMES NOW the Respondent, Robert Marqusee, by and through undersigned counsel and pursuant to Rule 351-11.21(3) moves to vacate the Default Decision and Order of the Iowa Ethics and Campaign Disclosure Board as follows:

1. Respondent did not receive notice of the hearing. On information and belief, the Respondent was not served by personal service or certified mail. While the rules of the Iowa Ethics and Campaign Disclosure Board also permit service by first class mail, if that was the method of service utilized by the Board, it did not result in Respondent actually receiving notice of the hearing.

2. As a result, the Respondent had no actual notice of the September 7, 2007 hearing.

3. The first notice that Respondent actually received that a proceeding was pending was the Default Decision and Order, which had already been rendered on September 20, 2007 and which was purportedly sent by first class mail on September 28, 2007 to Respondent.

4. The envelope in which the Default Decision and Order was mailed indicates that mailing did not actually occur until October 1, 2007.

5. A Default Decision and Order may be set aside for good cause. Good cause is defined as having the same meaning as good cause for setting aside a Default Judgment under Iowa Rule of Civil Procedure 1.977.

6. Rule 1.977 allows a default to be set aside for mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty.

7. In this case, the Default Decision and Order is properly set aside for inadvertence and surprise, as Respondent did not receive actual notice of the proceedings prior to the Default Decision and Order being entered.

8. Respondent did not consciously fail to appear and respond to the notice of hearing, but simply did not receive notice of the hearing.

WHEREFORE, the Respondent requests that Motion to Vacate be granted, and that a new hearing date be set after notice of hearing is given to Respondent.

Respectfully submitted.

HEIDMAN, REDMOND, FREDREGILL,
PATTERSON, PLAZA, DYKSTRA & PRAHL, L.L.P.

BY: 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by mailing by UPS Mail on the 16th day of October, 2007.

